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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 855

ROBERT G. VOKES, ET AL.,
Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM.

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Appellee, pursuant to Rule 16(1)(b)(c) of the Revised Rules of the Supreme Court of the United States, moves that the appeal be dismissed on the ground that it does not present a substantial federal question and further because the judgment rests on an adequate non-federal basis; alternatively, appellee moves that the final judgment of the Supreme Court of Illinois be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

ARGUMENT.

In Illinois municipalities may license and regulate taxicabs (Ill. Rev. Stat. 1963, chap. 24, par. 11-42-6) and may regulate the use of streets (Ill. Rev. Stat. 1963, chap. 24, par. 11-80-2) and traffic thereon (Ill. Rev. Stat. 1963, chap. 24, par. 11-80-20).

Each city and village has adopted its own local ordinance licensing and regulating the operation of taxicabs within their own municipalities. Appellants are employees of the Evanston and Skokie Cab Companies engaged in the business of transporting passengers for profit over the public streets. The Chicago ordinance prohibits appellants from operating their taxicabs over Chicago streets without a license (Municipal Code of Chicago, Section 28-2). However, appellants may enter Chicago with a passenger and discharge such passenger in Chicago, after which appellants may not solicit or accept passengers within Chicago (Municipal Code of Chicago, Section 28-3).

Appellants contend that their constitutional rights have been violated because they were arrested in Chicago where they were engaged in operating their taxicabs for profit conveying passengers from a point within Chicago to a destination within Chicago. They were operating solely within Chicago and had not entered the City for the purpose of discharging passengers accepted for transportation outside the City.

Appellants are not challenging those provisions of the Chicago ordinance which led to their arrest, *i.e.*, that they were operating unlicensed taxicabs over the streets of Chicago for profit. Rather, they are attacking an entirely separate provision of the ordinance, *viz.:* the portion of

the ordinance relating to corporate applicants for a Chicago license which provides, in part (Municipal Code of Chicago, Section 28-5.1):

> "All corporate applicants * * * shall be organized or qualified to do business under the laws of Illinois and have their principal places of business in the city of Chicago * * *."

Appellants argue that this requirement is discriminatory against Illinois corporations which do not have a Chicago address and that, therefore, appellants should not have been found guilty of violating ordinance provisions which prohibit them from operating unlicensed vehicles over Chicago streets. Appellants contend that to require corporate applicants to have their principal places of business in the municipality which licenses them is a violation of constitutional guarantees of due process and equal protection of the laws.

The court below answered appellants' contentions and reviewed the authorities, both *pro* and *con*, and concluded that the ordinance provisions in question were a reasonable exercise of the police power. (*City of Chicago* v. *Vokes*, 28 Ill. 2d 475, 193 N. E. 2d 40.) It would be repetitious for us to employ the same arguments here and in the interest of brevity we adopt the opinion of the court below as our argument.

With one exception (and the exception sustains our position, not appellants'), none of the authorities relied upon by appellants are relevant to the issue before the Court. The courts have uniformly rejected as unconstitutional any arbitrary discrimination against non-residents. On the other hand, the courts have sustained legislation required under the police power for the protection of local citizens. The latter is the situation in the case at bar.

In *City of Elgin* v. *Winchester*, 300 Ill. 214, 133 N. E. 205

(1921), an ordinance was held to be unconstitutional as unreasonable and arbitrary. In that case, Elgin adopted an ordinance prohibiting the distribution of advertisements in the city without first obtaining a license so to do. A bond of $300 was required of each applicant and a fee of $2 per day for each person employed was charged. However, residents of Elgin were not required to obtain a license if the mayor issued them a permit. A traveling salesman from New York distributed pamphlets advertising Jell-O products and solicited orders for such products. The Illinois court held this to be an arbitrary discrimination without any redeeming features. Indeed, none were advanced.

Larson v. *City of Rockford*, 371 Ill. 441, 21 N. E. 2d 396 (1939), involved an ordinance licensing automatic vending machines for the sale of candy, peanuts, soft drinks, popcorn and gum. The ordinance provided for the issuance of licenses upon evidence (p. 443):

> "* * * that the applicant, if an individual, or the person in charge of the business, if it is a firm or corporation, is a responsible person of good character and reputation having a residence or business address in the city of Rockford."

Suit was brought by an individual and also by a corporation. In sustaining the ordinance the Illinois court distinguished the arbitrary discriminatory aspects condemned in the *City of Elgin* case and said (pp. 445, 446):

> "The ordinance was adopted by the city council * * * for the protection of the public * * *. Where the council reasonably exercises its legislative power over subjects properly within its legitimate field, the requirement will be upheld. * * * [T]he city council might reasonably have believed that public safety and health would be promoted by requiring operators * * * to maintain a place where inspectors * * * might communicate with them * * * and where customers might

> register complaints and receive adjustments. * * * Under such circumstances, we believe the council was warranted in requiring every operator to establish a * * * business address in the city for the protection of customers and to facilitate enforcement of the ordinance."

Thus, the test is whether the legislation under attack is a reasonable exercise of legislative judgment for the protection of the public or whether it is an arbitrary expression of legislative power enacted solely to discriminate in favor of residents. The court below reviewed in patient detail the many cogent reasons why the "place of business" requirement was reasonable (28 Ill. 2d 475, pp. 478-482) and concluded that there was no merit to appellants' constitutional objections.

Authorities other than Illinois decisions are equally inapplicable to the facts in the case at bar. *People* v. *Bowen*, 175 N. Y. S. 2d 125, 11 Misc. 2d 462 (Court of Special Sessions of City of New York, Appellate Part, 1st Dept., 1958) held invalid an ordinance making two years residence in the city a prerequisite to application for a license as a sightseeing guide as applied to persons conducting an interstate tour. The court held that the two-year requirement served no purpose and was therefore unreasonable.

Jewel Tea Co. v. *Town of Bel Air*, 192 Atl. 417 (Md. 1937), involved an ordinance which made it unlawful for any person not a resident to solicit orders from residents of the town without having a license so to do. Jewel Tea sought an injunction restraining the enforcement so that its salesmen could solicit orders for articles to be shipped in from Washington, D. C. No regulatory features were contained in the ordinance and it was held to be arbitrary and invalid.

Whipple v. *City of South Milwaukee*, 261 N. W. 235 (Wis. 1935), is another instance (like *City of Elgin* v. *Winchester*,

300 Ill. 214, discussed above) of the cases upon which defendants rely. In *Whipple* (as in *City of Elgin*) the ordinance complained of provided for a license fee, but its terms were inapplicable to residents. Although defendants quote extensively from *Whipple*, it is thus proved to be distinguishable from the case at bar.

City of New Brunswick v. *Zimmerman*, 79 F. 2d 428 (3rd Cir. 1935), is similar to *People* v. *Bowen*, 175 N. Y. S. 2d 125, discussed above, where the ordinance required a year's residence before a barber's license could be applied for. It is completely foreign to the issues in the case at bar.

Mayor and City Council of Havre de Grace v. *Johnson*, 123 Atl. 65 (Md. 1923), is described by defendants as "the closest case on the facts" and defendants quote at length from the case. Again, however, defendants rely upon an ordinance substantially different from the regulatory ordinance in the case at bar. In the *Havre de Grace* case the ordinance prohibited entirely the operation of taxicabs on certain streets of the municipality, but the ordinance was inapplicable to "operators or drivers of automobiles who are actual and bona fide residents of the city * * * and who have resided therein for a continuous period of six months."

The annotations upon which appellants rely are similarly vulnerable. 61 A. L. R. 337 is an annotation following *Ex Parte Irish*, 121 Kan. 72, 250 Pac. 1056, 61 A. L. R. 332 (1926), another instance (like *City of Elgin* v. *Winchester*) where a license fee was imposed upon non-residents, but not upon residents. 112 A. L. R. 63 is an annotation following *Hinebaugh* v. *James*, 119 W. Va. 162, 192 S. E. 177, 112 A. L. R. 59 (W. Va. Court of Appeals, 1937), a case in which the court *sustained* the denial of a license to operate as a distributor of non-intoxicating beer to anyone who had not been a four-year resident. Neither set of facts is applicable to the case at bar.

Appellants are well aware of the provisions of the Chicago ordinance. They are not seeking, as they would have this Court believe, the right to be licensed. Such would be anathema to them. They are already licensed in their own municipalities, just as Chicago taxicab operators are licensed by Chicago. Appellants may come into Chicago to discharge passengers accepted outside of Chicago, just as Chicago taxicab operators may enter their municipalities to discharge passengers.

What appellants are seeking is the right to operate unlicensed taxicabs within the territorial limits of the City of Chicago, in competition with licensed taxicabs. Appellants want to pick up fares in Chicago and take them to destinations in Chicago. Provisions of the Chicago ordinances regulating taxicabs have been substantially the same for many, many years. Presumably, similar ordinances exist and are enforced in the municipalities where appellants are licensed to operate.

Appellants' conduct was undoubtedly inspired by their corporate employers who have filed a separate suit under Federal anti-trust laws, which suit has been dismissed. *Evanston Cab Co. v. City of Chicago*, 325 F. 2d 907 (7th Cir. 1963). In the *Evanston Cab Co.* suit, identical constitutional arguments were rejected, the court there approving the decision of the Illinois court in the case at bar.

Independent of the taxicab licensing ordinance, the City of Chicago has for many years limited the number of taxicabs that may operate on its streets. The courts have sustained the right of the City to limit or restrict the number of cabs which are to be operated on the streets and has enjoined the issuance of additional licenses until hearings are conducted to determine the need for more taxicabs (*Yellow Cab Co. v. City of Chicago*, 396 Ill. 388, 397). The present ordinance (Municipal Code of Chicago, chap. 195A) was enacted subsequent to extensive public hearings (*Yel-*

low Cab Co. v. City of Chicago, 23 Ill. 2d 453, 456) and limits taxicab licenses in the city to 4600. If appellants are permitted to operate in the City of Chicago, then the contract rights of those who now hold licenses are violated and their business threatened. The validity of the limiting ordinance has been sustained by the court and, consequently, appellants cannot operate in defiance of the ordinance thereby increasing the number of taxicabs on the streets of Chicago and destroying the business of those legally licensed under the ordinance.

In addition to upholding the ordinance limiting the number of taxicabs which may operate in Chicago, the court has also held that Chicago residents may not compel the issuance of licenses to them (*People ex rel. Hafer v. Flynn*, 13 Ill. 2d 368). Thus, residents and non-residents are in the same position—neither can obtain licenses because the number of taxicabs which may operate in the city has been restricted to a certain number. To permit more would frustrate the limiting ordinance and expose the city to litigation for not adhering to its own ordinance.

CONCLUSION

We respectfully submit that the appellants present no substantial question for the decision of this Court, and that the judgment of the Supreme Court of Illinois should be affirmed, or, alternatively, that the appeal should be dismissed.

Respectfully submitted,

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